

E-MAILS FROM COMMITTEE MEMBERS

From: Markham, Sandra
Sent: Tuesday, April 23, 2013 8:43 AM
To: Hardman, Melinda; Lopez, Kymberly J
Subject: Electronic Records Retention Committee

A couple more issues that you may want to include in the initial discussion regarding paper versus electronic records retention are:

Search warrants, the retention schedule is one year after the year filed. See ARS 13-3918.

13-3918. Time of execution and return

A. A search warrant shall be executed within five calendar days from its issuance and returned to a magistrate within three court business days after the warrant is executed. Upon expiration of the five day period, the warrant is void unless the time is extended by a magistrate. The time for execution of the warrant may be extended for no longer than five calendar days. The documents and records of the court relating to the search warrant need not be open to the public until the return of the warrant or the warrant is deemed void pursuant to this section unless a magistrate orders the time to be shortened or lengthened for good cause. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.

B. If a duplicate original search warrant has been executed, the peace officer who executed the warrant shall enter the exact time of its execution on its face.

Juvenile delinquencies. The retention schedule is zero days after satisfaction of ARS 8-349 or following the juvenile's 30th birthday, ARS. 13-912.

8-349. Destruction of juvenile records; electronic research records

A. A person who has been referred to juvenile court may apply for destruction of the person's juvenile court and department of juvenile corrections records.

B. If the records concern a referral or citation that did not result in further action or that resulted in diversion, placement in a community based alternative program or an adjudication for an offense other than an offense listed in section 13-501, subsection A or B or title 28, chapter 4, the person shall file an application with the juvenile court and shall serve a copy of the application on the county attorney in the county in which the referral was made. The person shall certify under oath that all of the following apply:

1. The person is at least eighteen years of age.
2. The person has not been convicted of a felony offense or adjudicated delinquent for an offense that would be an offense listed in section 13-501, subsection A or B or title 28, chapter 4.
3. A criminal charge is not pending.
4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
5. All restitution and monetary assessments have been paid in full.

C. The juvenile court may order the destruction of records under subsection B of this section if the court finds all of the following:

1. The person is at least eighteen years of age.
2. The person has not been convicted of a felony offense.
3. A criminal charge is not pending.
4. The person was not adjudicated for an offense listed in section 13-501, subsection A or B or

E-MAILS FROM COMMITTEE MEMBERS

title 28, chapter 4.

5. The person successfully completed all of the terms and conditions of probation or was discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.

6. All restitution and monetary assessments have been paid in full.

7. The destruction of the records is in the interests of justice.

8. The destruction of the records would further the rehabilitative process of the applicant.

D. If the records concern a referral that resulted in an adjudication of delinquency for an offense not subject to subsection B of this section the person shall file the application with the juvenile court and shall serve a copy of the application on the county attorney in the county in which the referral was made. The person shall certify under oath that all of the following apply:

1. The person is at least twenty-five years of age.

2. The person has not been convicted of a felony offense.

3. A criminal charge is not pending.

4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.

5. All restitution and monetary assessments have been paid in full.

E. The juvenile court may order the destruction of records under subsection D of this section if the county attorney does not object within ninety days after the date of the notice and the court finds that all of the following apply:

1. The person is at least twenty-five years of age.

2. The person has not been convicted of a felony offense.

3. A criminal charge is not pending.

4. The person has successfully completed all of the terms and conditions of probation, including the payment of all restitution, or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.

5. All restitution and monetary assessments have been paid in full.

6. The destruction of the records would be in the interests of justice.

7. The destruction of the records would further the rehabilitative process of the applicant.

F. The juvenile court and the department of juvenile corrections may store any records for research purposes.

For juvenile delinquencies, the retention schedule goes on to state, "Microfilm and dispose in accordance with court order. The juvenile court may authorize the microfilming or destruction of these cases or orders of protection, injunctions against harassment issued pursuant to ARS 13-3602. I think most of the Clerks across the state currently destroy the juvenile paper file when they receive an order of destruction. What should we be doing in our case management system AJACS?

Sandra K Markham
Clerk of Superior Court
Yavapai County

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FROM: JUDGE DOROTHY LITTLE

IT IS ORDERED that the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records is established to examine and make recommendations on the following questions:

1. When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive? Perhaps it is not necessary to be mandatory destruction but mandatory as to what is available to the public to assure consistency across the court levels.
2. Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate? Current time frames are adequate-although the destruction of civil traffic may be premature to statistical reporting the time should be extended to assure available records for statistical purposes.
3. Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level? Consistency is important for each court level, limited and general.
4. Once the retention deadline is reached, should originals or copies of documents or data be retained for purposes of government research and analysis and, if so, should those records continue to be publicly available or released only pursuant to court order? If it is recommended to maintain records for research and analysis it should only be publicly available or released pursuant to a court order.

SCENARIOS:

- A dentist from Wisconsin calls year after year requesting a letter with a statement that indicates his waste of finite ticket is a “civil traffic” violation. This occurs every year during little league signup.

This ticket was received in 1997. (Ultimately this case was deleted from AZTEC)

- Multiple records requests for cases that are 10 years or older these are easy to comply with as there isn't any physical file however they generally require more follow up from the requestor. Thus we receive multiple calls for the same record.
- An electronic record still exists, yet an MVD record has been purged and no paper record exists with the court. An abstract was requested as a follow up with MVD?
- An electronic record exists a paper record does not; the electronic record is not complete or appears to have an error.
- We still have records from LOCIS many of these records are not complete.